

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(Criminal Jurisdiction)

Thursday, the Fourteenth day of February Two Thousand Nineteen

PRESENT

The Hon`ble Mr Justice M. SATHYANARAYANAN

and

The Hon`ble Mr Justice M. NIRMAL KUMAR

CRIMINAL MISCELLANEOUS PETITION No.849 of 2019

IN CRL A.41/2019

PALANIVEL

[PETITIONER]

Vs

STATE REP BY
THE INSPECTOR OF POLICE,
NAGAPATTINAM POLICE STATION,
NAGAPATTINAM.

[RESPONDENT]

Petition praying that in the circumstances stated therein and in the Memorandum of Grounds in CRL A.41/2019 on the file of the High Court, the High Court will be pleased to suspend the sentence imposed by the Learned District and Sessions Judge at Nagapattinam in SC.No.33 of 2013 dt.11.3.2014 and enlarged the petitioner on bail.

Order : This petition coming on for orders upon perusing the petition and the Memorandum of Grounds in CRL A.41/2019 on the file of the High Court and upon hearing the arguments of M/S.A.ILANGO VAN, Advocate for the petitioner and of MR.C.IYYAPPARAJ, ADDITIONAL PUBLIC PROSECUTOR on behalf of the Respondent the court made the following order:-

The petitioner / appellant is the sole accused in S.C.No.33 of 2013 on the file of the Court of District and Sessions Judge, Nagercoil and he stood charged and tried for the commission of offence under Section 302 IPC and vide impugned judgment, he was convicted and sentenced to undergo Rigorous Imprisonment of Life and to pay a fine of Rs.5,000/- in-default to undergo 1 year Rigorous Imprisonment. Challenging the conviction and sentence recorded by the Trial Court, the petitioner/appellant has filed the present appeal and pending disposal of the same, prays for suspension of substantive sentence of imprisonment imposed on him, by filing this miscellaneous petition.

2. The learned counsel appearing for the petitioner would submit that the deceased is none other than the son of the appellant/accused and P.W.4 is the wife of the appellant/accused and PW.1 is the daughter-in-law of the appellant. On account of previous enmity and motive, they had made false allegation against the petitioner/appellant, as if it was the appellant / accused, who committed murder of his own son on 24.10.2012 at about 10.15 a.m and also drawn attention of this Court to the testimony of the doctor-P.W.11 who conducted autopsy and would submit that in the absence of definite opinion that the fatal injury would have been caused by M.O.3/knife said to have been used by the appellant, finding guilty and appreciation of evidence and the conclusion reached by the Trial Court is wholly unsustainable and would further urge that since the appellant / accused is having bright chance of success in this appeal, prays for suspension of substantive sentence of imprisonment.

3. *Per contra*, Mr.C.Iyappa Raj, learned Additional Public Prosecutor appearing for the respondent would submit that since the eyewitness to the occurrence are none other than the daughter-in-law and wife of the appellant / accused, their testimonies are corroborated each other on material particulars and as per the Postmortem Report given by P.W.11-doctor, marked as Ex.P13, the deceased died on account of homicidal violence and the testimonies of eyewitnesses and the scientific evidence had pointed out the guilt on the part of the petitioner/appellant / accused alone and therefore, prays for dismissal of this petition.

4. This Court has carefully considered the rival submission and also perused the materials placed before it.

5. A perusal of the impugned judgment would *prima facie* disclose that it was the appellant / accused, who on account of drunken mood, has developed animosity towards P.W.4 by suspecting her fidelity. It appears that they had wordy altercation on 24.10.2012 and in a fit of rage, he took M.O.3 / knife and stabbed his son on his chest and as a consequence, he died and the said occurrence was witnessed by P.Ws.1 and 4. The material portion of the testimonies have also been extracted in the impugned judgment and it also *prima facie* disclose that their testimonies corroborate with each other on material particulars, especially as to the overt act on the part of the petitioner / appellant. As pointed by the learned Additional Public Prosecutor appearing for the State the scientific evidence had supported the case of the prosecution that the deceased had died on account of homicidal violence. In the considered opinion of this Court, the points now urged by the learned counsel appearing for the petitioner / appellant may be appreciated only during the course of hearing of this appeal.

6. In the light of the reasons assigned, this Court is of the considered view that it is not a fit case to grant the relief as sought for. In the result, the miscellaneous petition is dismissed.

7. This Court taking into consideration of the fact that the petitioner / appellant is aged about 76 years, directs the Registry to prepare the typed set of documents and list the appeal for final hearing on **21.03.2019**.

-sd/-
14/02/2019

This order, on being produced, be punctually observed and carried into execution by all concerned

TRUE COPY

Sub-Assistant Registrar (Statistics/C.S.)
High Court, Madras - 600 104.

TO

1 THE DISTRICT AND SESSIONS
JUDGE, NAGAPATTINAM.

2 THE INSPECTOR OF POLICE,
NAGAPATTINAM POLICE STATION,
NAGAPATTINAM.

3 THE PUBLIC PROSECUTOR
HIGH COURT, MADRAS.

4 THE SUPERINTENDENT,
CENTRAL PRISON, CUDDALORE.

5 THE SECTION OFFICER,
CRIMINAL SECTION,
HIGH COURT, MADRAS.

C.C. to M/S.A.ILANGO VAN Advocate on payment of necessary charges

Order

in
CRL MP.849/2019
in
CRL A.41/2019

Date :14/02/2019

From 7.2.2001 the Registry is issuing certified copies of the BAIL/Anti.BAIL Orders in this format